

In the Matter of Merchant Mariner's Document No. Z-95107

License No. 38778

Issued to: ARTHUR LAVERICK

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

775

ARTHUR LAVERICK

In the Matter of Merchant Mariner's Document No. Z-95107
License No. 38778
Issued to: ARTHUR LAVERICK

and

In the Matter of Merchant Mariner's Document No. Z-83175
License No. 135685
Issued to: JOHN D. WEBB

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 code of Federal Regulations Sec. 137.11-1.

By separate orders dated 10 May, 1954, an Examiner of the United States Coast Guard at New Orleans, Louisiana, revoked License No. 38778 and Merchant Mariner's Document No. 95107 issued to Arthur Laverick, and suspended License No. 135685 and Merchant Mariner's Document No. Z-83175 issued to John D. Webb upon finding them guilty of negligence based upon specifications alleging in substance that while serving as Master and Second Mate, respectively, on board the American SS JOSEPH LYKES under authority of the licenses above described, on or about 13 February, 1954, while said vessel was navigating in conditions of fog and reduced visibility in the North Sea, they neglected and failed to perform certain acts which contributed to the grounding of the vessel.

As to the Master, it was alleged that, during a period of almost 5 hours, he failed to perform his duty to supervise the navigation of his vessel (First Specification); and he failed to properly make use of all available navigational data and equipment in order to ascertain the position of his vessel when she was standing into danger (Second specification).

The First Specification against the Second Mate contains substantially the same allegations as the Second Specification with which the Master was charged. A Second Specification against the Second Mate alleged that he failed to stop the vessel and accurately ascertain her position when the information available to him indicated that the vessel was standing into danger.

At a hearing held in joinder, the Appellants were given a full explanation of the nature of the proceedings, the rights to which they were entitled and the possible results of the hearing. Both Appellants were represented by the same counsel of their own selection and each Appellant entered pleas of "not guilty" to the charge and two specifications proffered against him.

Thereupon, the Investigating Officer made his opening statement. The parties stipulated in evidence the testimony of five members of the crew whose testimony was taken at the Coast Guard investigation into the grounding of the JOSEPH LYKES on 13 February, 1954. The Investigating Officer then introduced in evidence several documentary exhibits including two charts, one of which was being used at the time of the accident. The Second Mate was called as a witness in the case against the Master. It was agreed that the Second Mate's testimony would not be used against him. The Investigating Officer then rested his case. Counsel's motion to dismiss the case against both Appellants on the ground of lack of proof was denied by the Examiner.

In defense, the Appellants testified under oath in their own behalves. Counsel then indicated that he had nothing further to offer in evidence.

At the conclusions of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved against both Appellants by proof of the two specifications proffered against each of the Appellants.

The Examiner entered the order revoking the Master's License No. 38778 and Merchant Mariner's Document No. Z-95107 and suspending the Second Mate's License No. 135685 and Merchant Mariner's Document No. Z-83175 for a period of six months. The order against the Master's documents was limited to the extent that he should be permitted to obtain a license as Chief Officer and a Merchant Mariner's Document after a period of six months. In addition to the documents mentioned specifically, the orders were directed against all other licenses and merchant mariner's documents held by the Appellants.

From these orders, this appeal has been taken and it is urged that whether the Appellants' conduct was negligent or reasonable under the circumstances must be determined by the knowledge they had at the time and not by hindsight; Appellant's calculations and assumptions were those of a reasonable man; they used all available navigational data and equipment; and the Master took every precaution in his personal navigation of the ship. It is contended that it was a reasonable assumption that the 1215 fix was accurate but that the P-8 Light Vessel had not been seen or heard by 1600 because the head wind and westerly current had slowed the speed of the ship to less than her prior dead reckoning speed. Appellants were not guilty of "negligence" if they made an "error of judgment" while acting as reasonable men on the basis of the facts available to them.

In conclusion, it is respectfully submitted that the findings of guilty to the charge of "negligence" should be set aside; or, in the alternative, that the exceedingly harsh orders imposed should be mitigated and the highest licenses of the Appellants restored to them forthwith.

APPEARANCES: Messrs. Terriberry, Young, Rault and Carroll of New Orleans, Louisiana, by Alfred M. Farrell, Jr., Esquire, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On a voyage including the dates of 11 and 13 February, 1954, the Appellants were serving as Master and Second Mate (navigator) on board the American SS JOSEPH LYKES and acting under authority of their License Nos. 38778 and 135685, respectively, when the ship ran aground in the shoals off Helgoland Island at 1706 on 13 February, 1954, while enroute from London to Bremerhaven via the North Sea.

The JOSEPH LYKES got under way, fully loaded, from London at 1818 on 11 February, 1954, with a mean draft of approximately 24.5 feet. Due to dense fog, she was required to anchor overnight in the River Thames approaches. At 1748 on 12 February, 1954, the LYKES took her departure on course 022 degrees true making approximately 80 R.P.M. At 1845, the Master ordered a change of course to 027 degrees true. At 2155, Smiths Knoll Light was sighted and course was changed to 032 degrees true to intercept Buoy S-2 which was about 90 miles distant from Smiths Knoll Light. The latter was the last visual aid to navigation which was seen prior to the grounding; and no celestial navigation was possible due to the weather. From this time until the grounding, visibility was reduced to between one and two miles.

The ship's clocks were advanced one hour at 0200 on 13 February, 1954. At 0620 on this date, the Master ordered a course change to 067 degrees true when the dead reckoning position of the ship indicated that she was in the vicinity of Buoy S-2. At 0900, course was changed to 093 degrees true to head for the P-8 Light Vessel at a distance of approximately 96 miles. this aid was equipped with a nautilphone which sounded the letters "PE" in Morse Code every 30 seconds. The Master thought this signal would be heard as the LYKES approached the Light Vessel. At this point, he intended to change course to 124 degrees true to approach Bremerhaven.

The Third Mate had the 1200 to 1600 watch. At 1215, the Junior Third Mate obtained a R.D.F. position with P-8 Light Vessel bearing 102 degrees and Terschelling Bank Light Vessel bearing 206 degrees. This position was obtained in the presence of the two Appellants and it was considered to be a good fix. The bearings were plotted on the chart by the Second Mate. The plot indicated that the ship was about 10 miles to the north of her D.R. course line; that the ship had made good a speed of 13.6 knots since her departure; and that the P-8 Light Vessel was 45 miles away at 1215. Consequently, the Master ordered the course of the ship changed to 102 degrees true at 1215 in order to approach close to the P-8 Light Vessel. He expected the nautilphones signal of the Light Vessel to be heard between 1530 and 1600. Both the Master and Second Mate consulted the tide tables, tidal charts and light lists for this area.

At about 1500 or 1530, the Master was on the bridge inquiring as to whether the P-8 Light Vessel had been sighted. The Third Mate reported that he had not seen the Light Vessel or heard the signal. The Master decided to continue on the same course for another hour because he thought the rough sea, a head wind of force 5 (17-21 knots) and an adverse westerly current had retarded the ship's progress to such an extent that the ship was still to the west of the P-8 Light Vessel.

The Master then went to his cabin and fell asleep. He did not appear on the bridge again until after the grounding at 1706. The Master did not leave any specific instructions other than his standing orders to notify him upon sighting any aid to navigation.

At about 1530, the Second Mate attempted to get a R.D.F. bearing but he was unsuccessful due to heavy static. At 1600, the Second Mate relieved the Third Mate of the watch. The Second Mate was told by the Third Mate that he had not heard or seen the Light Vessel but that he had heard the fog signals of another ship at 1430 on his watch.

The Second Mate could not subsequently ascertain the position of the ship. But he did not notify the Master that the P-Light Vessel had not been located. The fathometer was in operation and it indicated a depth of 19 to 21 fathoms which was in agreement with the depth of water in the vicinity of the P-8 Light Vessel as indicated on the chart in use.

Between 1650 and 1653, a nautilphone signal was reported to the Second Mate by the Chief Mate who had been on the flying bridge with the lookout. The Second Mate thought it was the signal from the P-8 Light Vessel but he could not identify its characteristics because of the wind and the distance of the ship from the source of the signal. The Second Mate did not report this signal to the Master, check the fathometer readings, or order any change in speed. When the Second Mate

was relieved for supper by the Junior Third Mate at 1655, the latter said he would report the nautiphone signal to the Master as soon as it was identified as the signal from the P-8 Light Vessel.

Just prior to the grounding at 1706, the Junior Third Mate sighted an unidentified black nun buoy and ordered the engines astern. The ship ran aground in the shoals more than a mile north of Helgoland Island causing serious damage to the bottom of the ship. The LYKES floated free at 1912 but she anchored and awaited the assistance of tugs on the following day since the LYKES had lost her rudder.

It was later ascertained that the accident occurred about 24 miles past the intended turning point; that the P-8 Light Vessel had been passed about 1 1/2 miles abeam at approximately 1530; that the 1215 R.D.F. position was a good fix; that the average speed since 1215 was 14.2 knots; and that the nautiphone which was heard was located about 2 1/2 miles southeast of the place of the grounding.

There is no record of any prior disciplinary action having been taken against either of the Appellants.

OPINION

The record indicates that Appellants did not take the precautions which were reasonably required under the circumstances. If the Appellants had exercised their discretion and made choices among alternatives which a competent navigator might reasonably have made under the prevailing circumstances, they would have been guilty of "errors of judgment" which did not amount to "negligence." But in view of the Master's duty to insure the safety of his ship at all times and the Second Mate's responsibility as navigator, the evidence supports the conclusion that both of the Appellants were guilty of negligently failing to take all reasonable steps to avoid danger in the navigation of the ship.

The critical period commenced after the fix was obtained at 1215. On the basis of this information, the Appellants were able to calculate that the ship had made good a speed of 13.6 knots since 1748 on the previous day; and that the P-8 Light Vessel should be passed abeam not later than 1600 while the ship was on course 102 degrees true. Accordingly, the Master ordered a change of course to 102 degrees true. But beyond this point there were glaring omissions on the part of both the Master and the Second Mate when they completely failed to take advantage of their prior calculations involving speed, time and distance; and when they failed to act affirmatively after it was evident that the ship must be standing into dangerous waters. An extension of the course line of 102 degrees true showed that a continuation on this course would take the vessel into the shoals near Helgoland Island. The courts have repeatedly stated that the greater the danger, the greater is the degree of care which must be exercised in order to avoid being guilty of negligence.

Under these circumstances, the Appellants had no right to assume that the P-8 Light Vessel would eventually be seen or heard. The visibility was limited to between one and two miles; and the 1215 fix indicated that the ship had been set about 10 miles to the north of her intended course.

Nevertheless, the Master left the bridge not later than 1530 without leaving any word to call him if the Light Vessel was not sighted at the latest estimated time of 1600. Since the Light Vessel was near sighted and the Master fell asleep in his cabin, he did not exercise any supervision over the navigation of his vessel subsequent to approximately 1530. Obviously, the Master should have arranged to be on the bridge at all times after the ship might have passed the Light Vessel and be approaching the shoals off Helgoland Island.

In addition, the Master should have required a constant watch on the fathometer at all times after the course and prior speed of 13.6 knots indicated that the ship might be anywhere in the vicinity of Helgoland Island. If this had been done, the decreasing depth of the water would have been known before the ship ran aground at 1706 even though the Master did not order a change of course on the basis of a reasonable suspicion that the ship must have passed the P-8 Light Vessel at some time prior to 1706. If the ship had not reached the Light Vessel until 1706, her average speed since 1215 would have been less than 10 knots. In view of the prior speed of 13.6 knots, this was improbable despite the wind, current and rough seas.

For these reasons, I conclude that the Master was negligent as alleged.

As to the Second Mate, he was the ship's navigator and he had the same information as the Master had pertaining to the navigation of the ship. With this knowledge, he should have called the Master at 1600, or shortly thereafter, and consulted with him as to the advisability of proceeding on the same course. But the Second Mate made no attempt to utilize this navigational data long after it was probable that the ship had run past the point where it was necessary to make a change of course in order to avoid standing into dangerous waters beyond the P-8 Light Vessel.

Upon hearing the nauphone signal at about 1653, the Second Mate was even more negligent in failing to immediately inform the Master, stop the engines and use the fathometer. Any one of the latter courses of action might well have averted the grounding. Instead, the Second Mate went below to eat his supper after he had been relieved by the Junior Third Mate at 1655.

I conclude that the two specifications alleging negligence on the part of the Second Mate were proved.

CONCLUSION

There is substantial evidence that, in several different respects, both Appellants were guilty of failing to take action on the basis of the facts at their disposal at the time. Their omissions amounted to "negligence" and were not merely "errors of judgment" which appear to be "negligence" with the advantageous perspective of hindsight.

In view of the absence of any allegation or proof of incompetence on the part of the Master, the order imposed against his Master's License will be modified.

The order imposed against the license and Merchant Mariner's Document of the Second Mate

will be sustained.

ORDER

The order of the Examiner dated 20 May, 1954, at New Orleans, Louisiana, and directed against the Master's License No. 38778 and Merchant Mariner's Document No. Z-95107 is modified to provide for a one-year suspension of his Master Mariner's License. The provision for the issuance of a Chief Officer's License and a Merchant Mariner's Document to the Master after a period of six (6) months remains effective.

As so MODIFIED, said order is AFFIRMED.

ORDER

The order of the Examiner dated 20 May, 1954, at New Orleans, Louisiana, and directed against the Second Mate's License No. 135685 and Merchant Mariner's Document No. Z-83175 is hereby AFFIRMED.

A.C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 17th day of November, 1954.